

CERTIFICATE OF TRANSMISSION BY FACSIMILE (37 CFR 1.8)

Applicant(s): Toyoki UE et al.

Docket No.

JEL 31056I

Serial No.

10/057,897

Filing Date

January 29, 2002

Examiner

A. Gantt

Group Art Unit

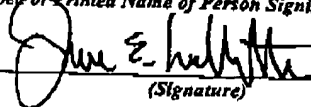
2684

Invention: **RADIO COMMUNICATION DEVICE AND METHOD OF CONTROLLING TRANSMISSION RATE**

I hereby certify that this

Interview Summary under MPEP 713.04*(Identify type of correspondence)*is being facsimile transmitted to the United States Patent and Trademark Office (Fax. No. 703-872-9314
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April 4 2003*(Date)*James E. Ledbetter*(Typed or Printed Name of Person Signing Certificate)**(Signature)*

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Inventors: Toyoki UE et al.

Prior Art Unit 2684

Serial No.: 10/057,897

Prior Examiner A. Gantt

Filed: January 29, 2002

For: RADIO COMMUNICATION DEVICE AND METHOD OF
CONTROLLING TRANSMISSION RATEINTERVIEW SUMMARY UNDER MPEP 713.04Assistant Commissioner for Patents
Washington, DC 20231

Sir:

The Applicants wish to thank the Examiners for the courtesy shown to their attorney during a personal interview on March 25, 2003. The following is a summary of the discussion during the interview.

During the interview, the Applicants' attorney reiterated the arguments made in the Response filed January 9, 2003. The Examiners proposed that the communicated "data rate selection" of col. 22, lines 25-26 of Mahany contains an indication of the measured quality at the target unit and thus the Examiners deemed the "data rate selection" as anticipating the "received quality measured" in the present claims.

However, Applicants' attorney pointed out that Mahany does not expressly state that the communicated "data rate selection"

contains an indication of the measured quality and thus such position must be based on *inherency* (see MPEP 2112).

Appellants' attorney noted that MPEP 2112 states that an examiner must support an inherency rejection by "objective evidence" or "cogent technical reasoning" of why the allegedly inherent subject matter is *necessarily* or *inevitably* present in the cited reference.

Appellants' attorney further noted that Mahany does not expressly state that the data rate selection decision is based solely on the measured quality. Instead, Mahany's language is subject to more than one possible interpretation. One such interpretation is that the data rate selection decision may be based on the measured signal quality and other factors, such as the degree of congestion of the entire communication system. In other words, only if Mahany's data rate selection decision is based solely on measured signal quality would a decision of low data rate necessarily indicate that the signal quality is low. But if the data rate selection decision is based on measured link quality and another factor such as degree of system congestion, a decision of low data rate may be made even though the measured link quality is high but the system is highly congested; in such case the low data rate decision does not indicate the link quality since it may be either high or low quality.

Thus, Applicants' attorney submitted that an inherency rejection based on Mahany is clearly unwarranted since a proper rejection based on inherency would require that the communicated "data rate selection" always or inevitably, and not merely possibly, include an indication of measured signal quality.

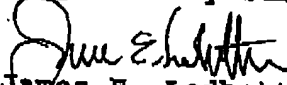
Thus, it is submitted that an anticipation rejection citing Mahany (whether based on express disclosure or inherent disclosure) is clearly unwarranted.

Accordingly, the Applicants respectfully submit that the 35 USC 102 rejection of claims 31-35 over Mahany should be withdrawn.

It is submitted that this application is in condition for allowance, and a notice to that effect is respectfully solicited.

If any issues remain which may be best resolved through a telephone communication, the Examiner is requested to telephone the undersigned at the local Washington, D.C. telephone number listed below.

Respectfully submitted,


James E. Ledbetter
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Date: April 4, 2003

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